

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

WORCESTER, ss.

Civil Action No.
04-40071-1

DAMON ASHER (Formerly Damon)
Milhem)
Plaintiff,)
v.)
DISCOVER FINANCIAL)
SERVICES, INC.)
Defendant)

U.S. DISTRICT COURT
DISTRICT OF MASS.

NOTICE OF REMOVAL

04-40071-1

To: THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT
COURT FOR THE DISTRICT OF MASSACHUSETTS:

1. Pursuant to 28 U.S.C. §§ 1441 and 1446, defendant, Discover Financial Services, Inc. ("Discover") files this Notice of Removal in connection with the above-entitled action and sets out below the grounds for this Notice of Removal.
2. This action was filed by the plaintiff, on or about March 13, 2004 in the District Court of Leominster, Worcester County, Commonwealth of Massachusetts. Plaintiff served a summons and copy of the Complaint on Discover on or about April 7, 2004.
3. In its Complaint, Plaintiff asserts a claim against Discover pursuant to 15 U.S.C. § 1666 et seq., also known as The Fair Credit Billing Act ("FCBA").
4. Because Plaintiff has asserted a Federal claim against Discover, this Court has original jurisdiction over the action pursuant to 28 U.S.C. § 1331. Removal of the action to this Court is proper pursuant to 28 U.S.C. § 1441.

FILING FEE PAID:

RECEIPT # 404317
AMOUNT \$ 150.00
BY DPTY CLK SS Jones
DATE 5-1-04

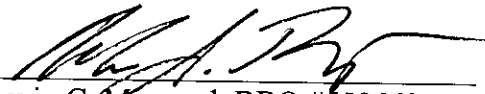
5. This Notice of Removal is filed with the Court on a timely basis under 28 U.S.C. § 1446(b).

6. Promptly after filing this Notice of Removal, Discover will give written notice hereof to all adverse parties and will file a copy hereof with the State Court.

7. A copy of all process, pleadings and orders served upon Discover to date is attached hereto as Exhibit A.

DISCOVER FINANCIAL SERVICES,
INC.

By its attorneys,



Kevin C. Maynard, BBO #550669

Andrew J. Drayer, BBO# 647192

BULKLEY, RICHARDSON &
GELINAS, LLP

One Post Office Square, Suite 3700

Boston, MA 0109

Phone: (617) 368-2500

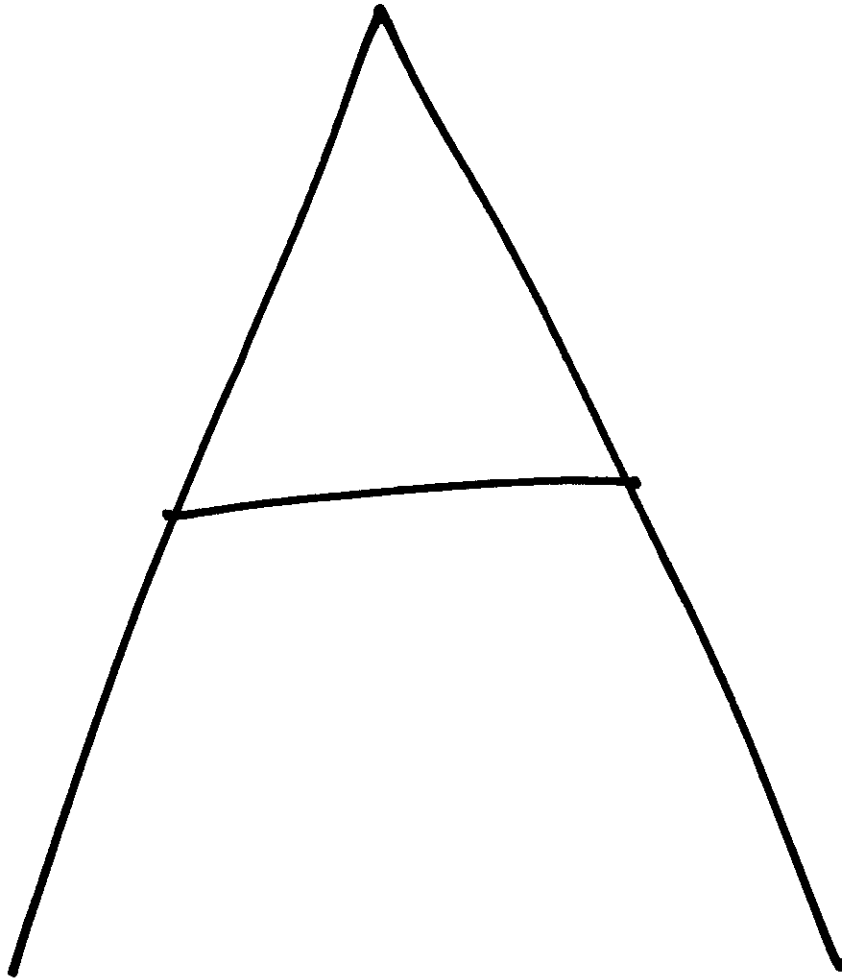
Fax: (617) 617-368-2525

Dated: May 6, 2004

CERTIFICATE OF SERVICE

I, Andrew J. Drayer, hereby certify that a true and accurate copy of the above document was served upon all counsel of record by first class mail, postage prepaid, on May 6, 2004.


Andrew J. Drayer



Trial Court of The Commonwealth
District Courts of Massachusetts
District Court of Westminster

DAMON ASHER (Formerly Damon Milhem)

Plaintiff

v.

DISCOVER FINANCIAL SERVICES, INC.
Defendant

Civil Action No. 0461 CV 110

SUMMONS

(Rule 4)

To defendant Discover Financial Services, Inc. of Boston, MA (Registered Agent)
(Name) (Address)

You are hereby summoned and required to serve upon Kimberly Asher, Esq., plaintiff's attorney), whose address is 102 Stoneleigh Rd., Holden, MA 01520, a copy of your answer to the complaint which is herewith served upon you, within 20 days after service of this summons, exclusive of the day of service. You are also required to file your answer to the complaint in the office of the Clerk of this court either before service upon plaintiff's attorney, or within 5 days thereafter. If you fail to meet the above requirements, judgment by default may be rendered against you for the relief demanded in the complaint. You need not appear personally in court to answer the complaint.

Unless otherwise provided by Rule 13(a), your answer must state as a counterclaim any claim which you may have against the plaintiff which arises out of the transaction or occurrence that is the subject matter of the plaintiff's claim or you will be barred from making such claim in any other action.

WITNESS JOHN J. CURRAN, JR.

Presiding Justice, on April 1, 2004

(SEAL)

(Date)

Clerk

- Note: (1) When more than one defendant is involved, the names of all defendants should appear in the action. If a separate summons is used for each defendant, each should be addressed to the particular defendant.
(2) The number assigned to the complaint by the Clerk at commencement of the action should be affixed to this summons before it is served.

RETURN OF SERVICE

On

4/7/04
(Date of Service)

I served a copy of the within summons, together with a copy of the complaint in this action, upon the within named defendant, in the following manner (see Rule 4 (d) (1-5)):

(Signature)

(Name and Title)

(Address)

- Note: (1) The person serving the process shall make proof of service thereof in writing to the court and to the party or his attorney, as the case may be, who has requested such service. Proof of service shall be made promptly and in any event within the same time during which the person served must respond to the process. Rule 4(f)
(2) Please place date you make service on defendant in the box on the copy served on the defendant, on the original returned to the court and on the copy returned to the person requesting service or his attorney.
(3) If service is made at the last and usual place of abode, the officer shall forthwith mail first class a copy of the summons to such last and usual place of abode, and shall set forth in the return the date of mailing and the address to which the summons was sent (G.L. c. 223, sec. 31).

This form prescribed by the Chief Justice of the District Courts

COMMONWEALTH OF MASSACHUSETTS
District Courts of Massachusetts
Worcester District Court; Leominster Division

C.A. NO. 0461 CV 110

DAMON ASHER (formerly Damon Milhem))
Plaintiff)

v.)

DISCOVER FINANCIAL SERVICES, INC.)
Defendant)

COMPLAINT

PARTIES

1. The plaintiff, Damon Asher (formerly Damon Milhem), has, at all material times, resided at 102 Stoneleigh Road, Holden, Massachusetts. *w/o Kor info*
2. The defendant, Discover Financial Services, Inc., [hereinafter "Discover"], is a corporation incorporated in the State of Delaware and with a principal place of business located at 2500 Lake Cook Road, Riverwoods, Illinois. Discover has a registered agent located at, 101 Federal Street, Boston, Massachusetts. *Admit*
3. At all material times the defendant, Discover, was registered to do business in the Commonwealth of Massachusetts, was conducting business within the Commonwealth of Massachusetts, and was subject to the rules and laws of the Commonwealth of Massachusetts. *Admit*

FACTS

4. At all material times Discover was doing business with an internet company vendor, Cyberrebates, com.
5. On or about March 20, 2001 to May 3, 2001, Damon Asher used his Discover card to make purchases from Cyberrebates.com. *w/o Kor i*
6. The services that Mr. Asher contracted for with Cyberrebates.com included both the receipt of durable goods and the receipt of 100% of the price paid for such goods within three (3) months of Mr. Asher's initial payment. *w/o Kor*
7. On or about May 14, 2001, Mr. Asher was notified that Cyberrebates.com was filing for bankruptcy. *w/o Kor i*
8. Cyberreate.com failed to fulfill its obligations under its contract with Mr. Asher by not delivering the goods and services contracted for in accordance with the agreement made at *w/o Kor i*

the time of these transactions, namely the checks for 100% of the monies originally paid by Mr. Asher.

9. On or about May 16, 2001, in compliance with 15 USCS § 1666(a), Mr. Asher provided written notice to Discover setting forth his discrepancy with Cyberrebate.com as a billing error, and requesting that Discover place all of the charges in question in dispute.
10. Discover failed to place the charges made between March 20, 2001 to May 3, 2001 in dispute.
11. On or about June 1, 2001 Discover sent written notification disavowing liability for the charges in question on the basis that Mr. Asher's claims were "separate from the underlying purchase transaction made to your Discover Card Account".
12. Following receipt of this letter, Mr. Asher and his wife spoke to Discover representatives on several occasions regarding the billing error and Discover's obligations under 15 USCS § 1666.
13. During at least two of these telephone calls, in an attempt to end the telephone conversation with Mr. Asher and/or his wife, Discover's agents made representations that were later determined to be false and misleading.
14. During this time Mr. Asher also made several requests pursuant to 15 USCS § 1666(a)(B)(ii) and M.G.L. ch. 140D, § 29, that Discover "provide copies of documentary evidence of the obligor's indebtedness", including but not limited to written procedures, protocols, and/or guidelines, to support or substantiate Discover's position regarding this matter.
15. Discover failed to provide such documentation.
16. As a result of Discover's failure to correct these billing errors, Mr. Asher failed to receive more than \$13,900.00 in services that were contracted for in his agreement with Cyberrebates.com.
17. On July 6, 2001 Mr. Asher served a demand letter pursuant to M.G.L. ch. 93A, § 9 on Discover at the Office of its CEO in Delaware, at its Dispute Department in Utah, and at its. Legal Department/Agent in Arizona via first class mail, return receipt requested. The grounds for this 93A Claim were Discover Financial Services, Inc.'s violations of 15 USCS § 1666 and M.G.L. ch. 140D, §§ 29, 32, and 34.
18. Although Mr. Asher received the return receipt from all three of Discover's above stated offices, Discover has failed to make any reply to the demand letter.

CAUSES OF ACTION

1. This is an action by the plaintiff, Damon Asher, against the defendant, Discover Financial Services, Inc., for failure to "make appropriate corrections in the account of the obligor" in violation of 15 USCS § 1666.

2. This is an action by the plaintiff, Damon Asher, against the defendant, Discover Financial Services, Inc., for failure to "provide copies of documentary evidence of the obligor's indebtedness" in violation of 15 USCS § 1666(a)(B)(ii) and M.G.L. ch. 140D, § 19.
3. This is an action by the plaintiff, Damon Asher, against the defendant, Discover Financial Services, Inc., for the use of willful, knowingly unfair, and deceptive acts and trade practices in violation of M.G.L. ch. 140D, § 34 and M.G.L. ch. 93A, § 9.
4. This is an action by the plaintiff, Damon Asher, against the defendant, Discover Financial Services, Inc., for violation of M.G.L. ch. 140D, § 29 and M.G.L. ch. 140D, § 32.

DEMANDS FOR RELIEF

1. The plaintiff demands Judgment against the defendant, Discover Financial Services, Inc., on the First Cause of Action, with interest and costs.
2. The plaintiff demands Judgment against the defendant, Discover Financial Services, Inc., on the Second Cause of Action, with interest and costs.
3. The plaintiff demands Judgment against the defendant, Discover Financial Services, Inc., on the Third Cause of Action, with interest, costs, and treble damages.
4. The plaintiff demands Judgment against the defendant, Discover Financial Services, Inc., on the Fourth Cause of Action, with interest, costs, and finance charges.

JURY CLAIM

The plaintiff reserves the right to have the case remanded to Superior Court for a trial by jury.

The Plaintiff, Damon Asher
By His Attorney

Kimberly Asher
KIMBERLY J. ASHER, ESQUIRE
Sworn: March 5, 2004
102 Stoneleigh Road
Holden, MA 01520

Dated: March 13, 2004

COMMONWEALTH OF MASSACHUSETTS
District Courts of Massachusetts
Worcester District Court; Leominster Division

C.A. NO. 0461 CV 110

DAMON ASHER (formerly Damon Milhem))
Plaintiff)
)
v.)
)
DISCOVER FINANCIAL SERVICES, INC.)
Defendant)

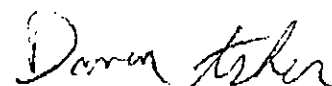
AFFIDAVIT OF REJECTION PURSUANT TO M.G.L. ch. 93A § 9

I, Damon Asher, under oath, depose and say the following:

1. On July 6, 2001, I served a demand letter pursuant to M.G.L. ch. 93A, § 9 on Discover Financial Services, Inc. at the Office of The CEO, 34 Starlifter Avenue, Dover Delaware via first class mail, return receipt.
2. The demand letter set forth the dispute, including references to the statutory violations, documentation of the actual damages, and notification to Discover Financial Services, Inc. that a reply was required within 30 days from receipt of the demand pursuant to Massachusetts Law. (A copy of the Demand Letter is attached as Exhibit 1).
2. On July 6, 2001, I also served a carbon copy of the letter pursuant to M.G.L. ch. 93A, § 9 on Discover Financial Services, Inc. at its Dispute Department, P.O. Box 30943, West Valley City, Utah, and at it Legal Department/Agent, P.O. Box 29019, Phoenix, Arizona via first class mail, return receipt.
3. I received signed return receipts from all three of the above departments within two weeks of services, dated July 9, 2001, July 10, 2001, and July 17, 2001 respectively. (Copies of the return receipts are attached as Exhibit 2).

4. To date, I have received no response to my demand from Discover Financial Services, Inc., or from anyone acting on Discover Financial Services, Inc.'s behalf, and Discover Financial Services has failed to correct the billing error.

Signed under the pains and penalties of perjury this 13th day of March, 2004.

A handwritten signature in cursive script, appearing to read "Damon Asher", is written over a horizontal line.

DAMON ASHER

EXHIBIT

1

Damon R. Milhem
Kimberly J. Milhem

102 Stoneleigh Road
Holden, Ma 01520
(508) 829-2636

July 6, 2001

VIA CERTIFIED MAIL

Discover Financial Services, Inc.
Attention: Office of the CEO
34 Starlifter Avenue
Dover, DL 19901

RE: Damon R. Milhem
Account No. 6011-0016-7061-6665

DEMAND LETTER PURSUANT TO M.G.L. 93A

Sir or Madam:

I am writing this letter on advise of counsel. If this matter is not resolved I will obtain representation and pursue any and all available legal remedies. This is a written demand for relief pursuant to the Massachusetts Consumer Protection Act, MASS. GEN. LAWS ch. 93A, § 9, MASS. GEN. LAWS ch. 140D, §§ 29, 32, and 34, and 15 USCS § 1666.

I made numerous purchases from an internet company, Cyberrebate.com using my Discover Platinum Card. At the time of these transactions, I entered into a contract with Cyberrebate.com for both the physical goods purchased and for the services advertised by this company in issuing a 100% rebate check for these items 10-14 weeks after receiving the rebate submission. As consideration for these goods and services, I tendered to the Cyberrebate corporation approximately 10 times the market value of the goods themselves, and allowed Cyberrebate.com to utilize the monies I paid in these transactions for a three to five month period. I fulfilled my obligations under this contract in paying the inflated value for the good, and in following the procedures set forth and advertised on the Cyberrebate.com website for recouping the full value of the money I paid. (Please see attached a page printed from the Cyberrebate.com website which advertises the procedures for the rebate service). Cyberrebate.com failed to fulfill its obligations and satisfy that contract by not delivering the goods and services in accordance with the agreement made at the time of these transactions.

On May 16, 2001, in compliance with 15 USCS § 1666(a), I provided written notice to Discover Financial Services setting forth my discrepancy with Cyberrebate.com and requesting that all of the charges in question be placed in dispute by Discover Financial Services. (Please see attached my letter to Discover Financial Services setting forth the dates and amounts of the incomplete transactions). On May 17, 2001, I received four letters from Discover Financial Services confirming

Page 2

July 6, 2001

that charges made on or prior to March 16, 2001 had been placed in dispute. Discover Financial Services did not address the requested disputed charges dating March 20, 2001 to May 3, 2001. On June 1, 2001, Discover Financial Services sent written notification to me stating that:

We have determined that the transaction was valid because you authorized the amount charged to your account, and you received the merchandise. We cannot assist you with any rebate arrangement you may have had with the merchant. Such an arrangement is separate from the underlying purchase transaction made to your Discover Card Account.

Following receipt of this letter my wife, Kimberly Milhern, called Discover Customer Service and the Discovery Dispute Department and spoke with numerous representatives. Although a Discover representative (Victor from the Dispute Department) acknowledged that "the agreement was that sometime in the future you [Milhern] would get a rebate so the merchandise would be free", no Discover Financial Service agent was able to provide documentation or reasoning as to why the rebate service contracted between myself and Cyberrebate.com did not constitute a "service" as defined in 15 USCS § 1666(b)(3):

(b) Billing error. For the purpose of this section, a "billing error" consists of any of the following:...

(3) ... goods or services not accepted by the obligor or his designee or not delivered to the obligor or his designee in accordance with the agreement made at the time of a transaction..

Discover representatives simply stated that the investigation team at headquarters concluded that the rebate was separate from the transaction for the merchandise and that the Discover Corporation never got involved in disputes over a manufacturer's rebate. [Please note that the transactions in question do not involve a "manufacturer's rebate"].

Further, although repeatedly requested, Discover Financial Corporation failed to provide any documentation, including but not limited to written procedures, protocols, and/or guidelines, to support or substantiate their position regarding this matter. As such, please consider this letter as a written request, pursuant to the 15 USCS § 1666(a)(B)(ii), "provide copies of documentary evidence of the obligor's indebtedness."

Finally, I have complied with the terms of the agreement regarding returns, and in fact, returned all of the items purchased from Cyberrebate.com using the Discover credit card. The agreement to purchase has been rescinded. As such, all appropriate charges to my account from Cyberrebate.com, along with any and all finance charges which have accumulated since my letter of May 16, 2001, should be credited to my account forthwith.

Representatives for Discover Financial Services have violated 15 USCS § 1666 and MASS. GEN. LAWS ch. 140D, §§ 29, 32, and 34 in failing to "make appropriate corrections in the account of the obligor, including the crediting of any finance charges". This failure constitutes unfair and deceptive acts and practices declared unlawful by MASS. GEN. LAWS ch. 93A, § 9. This letter serves as formal notice of my intention to pursue legal action against Discover Financial Services, Inc. in the

Page 3
July 6, 2001

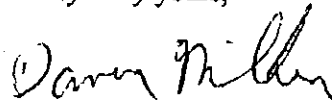
event Discover Financial Services, Inc. does not satisfactorily resolve the disputed charges to my Discover Platinum Card for transactions with the Cyberrebate.com corporation.

Accordingly, demand is hereby made that Discover Financial Services cancel all charges to my account made by Cyberrebate.com which are listed in the attached letter dated May 16, 2001, and that the appropriate credit, including finance charges, be made to my account. If Discover Financial Services fails to resolve this matter, they may be liable for attorney's costs and fees incurred in this matter. A failure by Discover Financial Services to comply with this demand within thirty (30) days of the date of this letter will compel me to file a civil action complaint for violation of the Massachusetts Consumer Protection Act, MASS. GEN. LAWS ch. 140D, §§ 29, 32, and 34, and 15 USCS § 1666.

If I retain counsel and file an action against Discover Financial Services pursuant to MASS. GEN. LAWS ch. 93A, § 9, and the conduct of Discover Financial Services is found to be unfair and/or deceptive, I will be awarded damages and attorney's fees incurred in the prosecution of this matter. Furthermore, if the court determines that Discover Financial Services conduct was willful or knowingly unfair and deceptive, the court may award treble damages, but not less than double damages. In addition other punitive damages may be awarded under MASS. GEN. LAWS ch. 176D.

I look forward to your prompt reply.

Very truly yours,



Damon Milhem

DRM/kjm

cc: Discover Financial Services, Inc. Dispute Department
Discover Financial Services, Inc. Legal Department

04-40071-ANG

JS 44 (Rev. 3/99)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Damon Asher (Formerly Damon Milhem)

(b) County of Residence of First Listed Plaintiff Worcester
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Kimberly J. Asher, Esq.
102 Stoneleigh Road
Holden, MA 01520

DEFENDANTS

Discover Financial Services, Inc.

County of Residence of First Listed Defendant Suffolk
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INSTEAD OF THE DEFENDANT'S ADDRESS.

Attorneys (If Known) Kevin C. Maynard, Esq.
Andrew J. Drayer, Esq.
Bulkley, Richardson and Gelinas, LLP
One Post Office Square, Ste. 3700
Boston, MA 02109

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State ☐ 1 ☐ 1 DEF Incorporated or Principal Place of Business in This State ☐ 4 ☐ 4 DEF
Citizen of Another State ☐ 2 ☐ 2 DEF Incorporated and Principal Place of Business in Another State ☐ 5 ☐ 5 DEF
Citizen or Subject of a Foreign Country ☐ 3 ☐ 3 DEF Foreign Nation ☐ 6 ☐ 6 DEF

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of <input type="checkbox"/> 160 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 362 Personal Injury-Med. Malpractice <input type="checkbox"/> 365 Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input checked="" type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	LABOR	SOCIAL SECURITY	
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIW C/DIW W (405 (g)) <input type="checkbox"/> 864 SSD Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS Third Party 26 USC 7609	

V. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- ☐ 1 Original Proceeding
☒ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify) _____
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

(Cite the U.S. Civil Statute under which you are filing and write brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

Plaintiff is pursuing a claim under The Fair Credit Billing Act, 15 U.S.C. 1666.

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

04-40071

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

1. Title of case (name of first party on each side only) Damon Asher (Formerly Damon Milhem)
v. Discover Financial Services, Inc.

2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).

- ☐ I. 160, 410, 470, R.23, REGARDLESS OF NATURE OF SUIT.
- ☐ II. 195, 368, 400, 440, 441-444, 540, 550, 555, 625, 710, 720, 730, 740, 790, 791, 820*, 830*, 840*, 850, 890, 892-894, 895, 950. *Also complete AO 120 or AO 121 for patent, trademark or copyright cases
- ☐ III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.
- ☒ IV. 220, 422, 423, 430, 460, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.
- ☐ V. 150, 152, 153.

3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.

None.

4. Has a prior action between the same parties and based on the same claim ever been filed in this court?

YES ☐ NO ☒

5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)

YES ☐ NO ☒

If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?

YES ☐ NO ☐

6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?

YES ☐ NO ☒

7. Do all of the parties in this action, excluding governmental agencies of the united states and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).

YES ☐ NO ☒

A. If yes, in which division do all of the non-governmental parties reside?

Eastern Division ☐ Central Division ☐ Western Division ☐

B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?

Eastern Division ☐ Central Division ☒ Western Division ☐

8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)

YES ☐ NO ☐

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Andrew J. Drayer, Esq., Kevin C. Maynard, Esq.

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